UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER LINDNER, Plaintiff -against- COURT SECURITY OFFICER (CSO) NEWELL, CSO MUSCHITIELLO, CSO JOHN DOE #1, CSO JOHN DOE #2, 2ND CIRCUIT COURT OF APPEALS CLERK MARGARET LAIN, ASSISTANT US MARSHAL (USM) JAMES HOWARD , USM BRIAN MURPHY, USM BETTY ANN PASCARELLA,WITNESS SECURITY S. JONES, CONGRESSIONAL AFFAIRS CHIEF D. DISRUD, US ATTORNEY PREET BHARARA, USM JOSEPH R. GUCCIONE, Defendants	**Civil Action No. 11 cv 08365 (AJN-MHD)** MOTION TO RECONSIDER AND PLAINTIFF RESPONSE TO AUSA COVERUP AND VIOLATION OF NY STATE LAW ON INTENT TO DECEIVE THE COURT, ATTACHMENTS OF SWORN NOTARIZED SIGNATURE OF PLAINTIFF

~~Was: Thursday, March 28, 2013 11:20 AM~~
~~Is: Tuesday, April 09, 2013 11:00 PM~~
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Cover Letters

To the Honorable USDJ Nathan:
I have been wronged and humbly ask Your Honor reconsider the dismissal (with and without prejudice) of my case which has been ongoing for 3 years, despite the willful indifference and contempt shown by the USMS to me and to The Court.

And I demand a hearing in court in person with my eye witness.

And as an Article III Judge appointed for life, Your Honor should hear my charges against CSO Newell, and the perjury in writing of USMS General Counsel Auerbach in his self-contradictory 3 affidavits, which require a judgment as to "intent to deceive" as well as perjury.

These are not minor matters, and a rich person would have had his day in Court; so too, should I as a poor man be heard in Court, and also to testify that beyond a reasonable doubt there was a videotape of CSO Newell hitting me, and eyewitness of CSO Muschitiello. It is not "due process" to deny me a chance to show this to the Court on mere technicalities which I disagree with Your Honor that perjury and assault and battery and obstruction of justice and intimidation of a witness should be **in any way** be considered brushed aside on technicalities of Bevins, etc. Those parties should be forced to answer in Court what Your Honor has forbade me to obtain subpoenas for.

In jury trials (which I am requesting), the Judge often gives a charge[1] that no other jury will have more information than they have, and that the Jury should give another shot at trying to reach a unanimous verdict. Analogously, I say that Your Honor has most of the information, and can proceed to the scheduling and discovery phase some 2 years after I filed this suit in 2011, and some 3 years after the wrongs done to me by the USMS **and** their CSO's. Surely 3 inconsistent declarations by USMS General Counsel Auerbach should be sufficient proof of perjury. May I remind Your Honor that it is difficult to

[1] Often called the "Allen charge", which was affirmed by the 2nd Circuit Court of Appeals in *US v. Robinson* 560 F.2d 507 (2d Cir. 1977) (en banc), rev'g 544 F.2d 611 (2d Cir. 1976).

prove a lawyer is lying, so it should not be easily dismissed when such an occurrence happens or else I am being denied the US Constitution's promise of "due process"?

The USMS (US Marshal Service) has the video[2] tapes of their CSO (Court Security Officer) assaulting me with his name plate, which he denied after I reported to the USMS. I attach a sworn affidavit that I believe beyond a reasonable doubt that the video tape of CSO Newell hitting me existed, and that is more than sufficient in a criminal case, and certainly more than sufficient in a civil case [compare OJ Simpson being innocent in the criminal case, but guilty in the almost identical civil case]. Had the roles been reversed, the video tape of that SDNY Courthouse incident would have been readily available, but in a coverup, the CSO denies it, and the USMS refuses to produce the tape (claiming it does not exist!), and the administrative arm USMS General Counsel Auerbach in Virginia both swore falsely that I did not file in time (I filed in 2010, with the DOJ (Department of Justice) passing on my complaint to Auerbach's department, and I followed up with a letter to them that month), and then after miraculously finding my timely complaint, says I need the video tapes, which Auerbach could produce by requesting / demanding them. The Court should ORDER under NY Judiciary §487 (a criminal misdemeanor) find that USMS General Counsel Auerbach as a lawyer did so have "intent to deceive" on any Court in NY State (to wit, SDNY), so that I can collect treble damages in a later civil suit. I should be granted the right to subpoena the video tapes of CSO Newell hitting me, and subpoena CSO Newell and CSO Muschitiello who will perjure themselves at their peril that Newell did not hit me and that Muschitiello did not witness Newell apologizing to me for doing so, and that CSO Newell lied to the USMS, and that USMS Howard and USMS Guccione obstructed justice by concealing the tapes which prove my sworn declaration under penalty of perjury that these events occurred.

As President Obama[3] said about the Sandy Hook killings of 100 days ago, which are "being forgotten" by the US Government (to wit, the Congress), this is not forgotten by the parents of the child victims nor by the President. I can't forget[4] that I was intentionally abused by the USMS's sworn-in agents who then

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[2] I note that the DC Appeals Court has ruled against the US in keeping videotapes secret for drone strikes on Friday, March 15, 2013 in No. 11-5320 American Civil Liberties Union And American Civil Liberties Union Foundation,Appellants v. Central Intelligence Agency,Appellee. I was hit in the head by the USMS' CSO Newell, where (like this cited case) the USMS is " refusing to confirm or deny that it had any such records" of a videotape, but the DC Appeal Court dealt with a more secret issue: that of killing and found that not confirming the existence of those tapes " was not justified ".

> " GARLAND, Chief Judge: The plaintiffs filed a Freedom of Information Act request for records held by the Central Intelligence Agency pertaining to the use of unmanned aerial vehicles ("drones") to carry out targeted killings. **The Agency issued a so-called Glomar response, refusing to confirm or deny that it had any such records**. The district court affirmed the Agency's response and granted summary judgment in its favor.
>
> The question on appeal is **whether the Agency's Glomar response was justified under the circumstances of this case. We conclude that it was not justified** and therefore reverse and remand for further proceedings." [**emphasis** added]
> http://www.cadc.uscourts.gov/internet/opinions.nsf/6471FF102FC611A685257B2F004DEA2A/$file/11-5320-1425559.pdf

[3] President Obama said on Thursday, March 28, 2013 that forgetting about something since a number of days have passed is "not what we are":

> " Let me tell you, the people here, they don't forget. Grace's dad is not forgetting. Hadiya's mom hasn't forgotten. The notion that two months or three months after something as horrific as what happened in Newtown happens and we've moved on to other things -- that's not who we are. That's not who we are. "
>
> http://www.nytimes.com/2013/03/29/us/remarks-by-president-obama-on-gun-violence.html?pagewanted=all

[4] Obama speaking of himself " I haven't forgotten ".

covered it up, and use all manner of bureaucratic delay and denial (some illegal, some not) to stop a reckoning by this honorable Court. It is not the America that I know.

To the ATF/DEA and Preet Bharara (US Attorney):
Your Confidential Informant (CI) has twice been approached to have me framed (allegedly). The first time was by 3 men in the SDNY Court House who asked her (Ms. Sally Smith) to perjure herself that I was physically threatening USDJ Sullivan, and the second time by her agency asking her to plant child porn in my apartment. Your agency then instructed Ms. Smith not to make a notarized statement about it, and later not even to speak about it to me, and threatened to withhold monies from her and maybe physically threaten her. If this were true, it would invalidate the testimony given by the CI over the past decade for all her cases, especially the one where she was asked to perjure herself, and it is unseemly for a CI who risks her life to be threatened by the ATF, who was lent / transferred from the DEA. Bharara should've protected the CI and found those 3 (government?) men who accosted Ms. Smith on the SDNY Courthouse premises during her testimony!

To the DOJ/US Attorney/USMS General Counsel Auerbach/Akal:
You are conspiring to hide a crime committed by the CSO, and the cover up / lying to a federal Law Enforcement Officer, and not interviewing the other CSO who witnessed both the assault on me and the verbal apology by CSO Newell. Both CSO's should be relieved of the duties without pay, and made to report the entire incident (including the assault, subsequent cover up, and why they were motivated to harass me while I was at the 2nd Circuit Court of Appeals waiting in line). All 4 of your should examine your systems of complaints to see that the "ball was dropped" by not following through and procuring statements and evidence and logging in of complaints and incidents, and possible destruction of the videotapes, much of which Richard Nixon wanted to do when Nixon's corruption led to criminal acts, cover ups, intended destruction of tapes, bribes and hush money. Except: that Nixon was doing that on the Executive Branch, and here the Executive is doing that to the Judicial Branch. USMS Guccione also (wrongly) gave my information about the tampering with witnesses (at least 2 of my witnesses, and also my communication to a federal Law Enforcement Officer about a possible federal crime) to the possible perpetrator of said crime(s), instead of following DOJ rules on getting higher approval before involving important government people (to wit: USDJ Sullivan) in an investigation; USMS Guccione was tipping off the alleged perpetrator. Please note that the DC Appeals Court (which I believe you report to geographically) has ruled against the CIA in its *Glomar* response of " refusing to confirm or deny that it had any such records. " Thus, please confirm or deny the listing of all videotapes on the day in question. (see note and footnote 2 to USDJ Nathan).

To US Attorney General Eric Holder, the DOJ OIG, Senator Schumer, and Senator Gillibrand:
With the information and photo ID I provided to agents Agents Kerwin John, Guido Modano and William Cella, you can verify whether Ms. Smith is indeed working for the DEA/ATF in the past years since 2006 (the date of the IBM suit 06cv4751 *Lindner v IBM, et al.*) and whether US Congresswoman Carolyn Maloney of NYC[5] did attempt to contact Ms. Smith's mother, who does not live in NYC where the Congresswoman represents. Both Ms. Smith and her mother took it as an attempt to involve Ms. Smith's mom in my (Lindner's) affairs, which allegedly that mom did not return the phone call, which I take as a violation of 18 USC § 1512(b)(3) attempting to influence a witness (etc.). Ms. Maloney should be ejected from the US House of Representatives for this action, which I can't provide to my representative, since I am in Maloney's district and Maloney also threatened to call the Capitol police if I contacted her office again. Apparently if the CI is to be believed, Maloney calls it harassment if I enquire about impeaching USDJ Sullivan (that is how I was instructed to move forward on impeachment, which begins in the

[5] Representing "New York's 12th district Manhattan/Queens/Brooklyn"
http://maloney.house.gov/photo-gallery/2009-photo-gallery

House), but it is okay for Maloney's office to call a citizen outside of Maloney's (NY) State to talk about the CI and about me (presumably)

And then the Judiciary Committee headed by Senator Schumer should look into why the USMS General Counsel gave conflicting Declarations 40 and 93 (first and third declaration, respectively), including a letter from the DOJ OIG as well as a letter from me. The letter is included as . Why should a subservient group (USMS) disregard an ORDER from the DOJ, and then lie about it to the US Attorney and the SDNY Court? And why did Her Honor USDJ Nathan not care about that lie? Nor why did Her Honor USDJ Nathan not care about me being assaulted by the CSO, and saying it caused no medical damages[6]:

> To the extent that Plaintiff alleges an excessive force claim against the CSO Defendants, his claim fails because he has not alleged sufficiently serious force or injury. The Supreme Court has held that courts should review excessive force claims under an "objective reasonableness" standard. *See Graham v. Connor*, 490 U.S. 386, 388 (1989). Courts in this district have dismissed actions for excessive force that fail to allege more than a de minimis use of force. *Liriano v. ICE/DHS*, 827 F. Supp. 2d 264, 271 (S.D.N.Y. 2011) ("Plaintiffs' allegation that the officers pushed Liriano against the wall likewise fails to present an actionable
>
> 15

I have an idea – a thought experiment which can be put into practice. If only an excessive force matters, then why not see if every day, a random US Marshal or CSO be given a number from 1 to 5. If the number is 2, then the second person who talks to that Marshal (or CSO) should be hit like I was hit. In other words, if that procedure was used to have a person remove their shoes for a metal detector, it would be fair, and would not be excessive and would not be actionable. However, I wager that if our CSO's and US Marshals hit just one per day (per SDNY) for the n^{th} person (in the example, n=2) they talked to, it would be a method of intimidation, perhaps terrorism, that would stop people from talking to any CSO or USM. I hereby assert the CSO's action was akin to terrorizing me so that I do not talk to a CSO or USM. It is as hideous as laughing at a disabled person who can only crawl up the stairs to the Courthouse, which the Supreme Court of the United States struck down[7] despite States' Rights, where laughter was a mechanism to discourage a citizen from seeking redress in a Court.

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[6] page 15 in ORDER #90.

[7] The NY Times Editorial noted:

> " While Mr. Lane crawled up, he says, the judge and other courthouse employees "stood at the top of the stairs and laughed at me." His case was not heard in the morning session, he says, and at the lunch break he crawled back down.
> …
> Incredibly, there is a real chance the Supreme Court will side with Tennessee. The court's conservative majority has been on a misguided "federalism" campaign, denying Congress's power to protect the environment, combat gun violence and ban discrimination. It has justified these rulings by saying it has to protect the "dignity" of the states. The discrimination in Mr. Lane's case is so horrific, however, it may help the court to grasp the possible consequences of that stand -- including its effect on the dignity of people like Mr. Lane. "
>
> " Editorial Observer; Can Disabled People Be Forced to Crawl Up the Courthouse Steps?," By Adam Cohen, Published: January 11, 2004 "
> http://www.nytimes.com/2004/01/11/opinion/editorial-observer-can-disabled-people-be-forced-crawl-up-courthouse-steps.html

Lane won in "*Tennessee v. Lane*, 541 U.S. 509 (2004), … a case in the Supreme Court of the United States involving Congress's enforcement powers under section 5 of the Fourteenth Amendment. "
http://en.wikipedia.org/wiki/Tennessee_v._Lane

Moreover, the DEA/ATF should not be involved with CI Ms. Sally Smith since I do not smoke tobacco or own a gun. Ms. Smith asserts it was the ATF that are the bad guys who may retaliate against her, and instructed Ms. Smith to file a false 911 call to the NYPD that I stole her photo ID. This can be checked against the records of 911, Ms. Smith, the DEA/ATF, and the photo ID I gave to the DOJ OIG Agents Steve, Kerwin and Guido located on the 29th floor in 1 Battery Park Place, NYC.

Also, why did the FBI refuse to respond to my letters of complaint and to my personal visit to the FBI building in NYC, and why did the FBI not open a case which the US DOJ OIG wrote to them in 2010?

To the Judicial Council / IRS:
It is likely that some serious money is being used / misused to bribe USDJ Sullivan and to cover up his actions, including the violation of 18 USC § 1512(b)(3) where USDJ Sullivan issued a show cause ORDER why I should not be held in contempt of Court for accusing Sullivan of aiding in the tampering of witnesses and in hindering or delaying my reporting that possible federal crime to federal Law Enforcement Officers, which is punishable by 20 years imprisonment. 18 USC § 1512(b)(3) does not exempt judges: "whoever" includes Judges (Sullivan), Presidents, lawyers (Jackson Lewis), mob figures, companies (IBM, Akal). I therefore ask the IRS to look into likely violations by Sullivan, the CSO's, the USMS personnel for tax evasion on their bribes, and reward me with the 10% (or whatever the statutory reward is) fee for uncovering that misuse of funds for private enrichment. Also, on the Constitutional Principle of Separation of Powers, the Executive Branch (USMS) is interfering with the Judicial Branch by not providing security, refusing to release videotapes (or possibly destroying them) that are owned by the Judicial Branch, and making the 2nd Circuit Court of Appeals area unsafe for me via threats and physical intimidation, including assault and battery for asking the CSO's name who was supposed to be looking into why my brief to the 2nd Circuit Court of Appeals was intercepted and delayed by persons unknown so as to miss the filing deadline (filed 3 times, including once in person with a timestamp) and also tampering/hindering/delaying a brief I submitted to Chief Judge Preska **upon Her Honor USDJ Preska's explicit request** in the IBM case of 06cv4751 *Lindner v IBM, et al.*

Also, I declare that the CI, who is known as Ms. Sally Smith, but as my filed[8] on Pacer document Part 1, US DOJ OIG Agents Kerwin John, Guido Modano and William Cella have the photo ID of Ms. Smith and her real name, which can be used to verify the allegations I have made and have heard from the Confidential Informant (CI). I know for a fact that USDJ Sullivan did an OSC (ORDER to Show Cause) why I should not be held in contempt for alleging in a communication to a federal Law Enforcement Officer (USMS Guccione) that Sullivan may have engaged in a possible federal crime, which is protected from anyone (including a USDJ, President, anyone) from knowledgeably attempting to influence, hinder or delay said communication. When I responded to Sullivan's ORDER in 06cv4751 *Lindner v IBM, et al.* by saying that the OSC was illegal, USDJ Sullivan did not rescind the ORDER nor did "His Honor" apologize for an offense that would land up to 20 years' imprisonment for others. I noted that not only did the OSC attempt to hinder my communication, but actually succeeded in a conversation I had with the USMS at 500 Pearl Street where the US Marshals advised me not to violate said ORDER, which I said my next sentences would point to Sullivan's possible involvement.

Moreover, my CI met with USDJ Sullivan twice according to the CI whom the US DOJ OIG can verify or we can jointly subpoena that alleged CI Ms. Sally Smith, and find out why Sullivan did ask Ms. Smith about me, which I feel is an ex parte communication to a witness in a case in which Sullivan is involved and in fact named in my papers as the proximate cause for the CSO Newell assaulting me with impunity.

[8] It is filed today as "Case 1:11-cv-08365-AJN-MHD Document 92 Filed 04/09/13" and has 18 pages.

Moreover, USMS General Counsel Auerbach, Esq.'s contradictory Declarations 40 and 93 (first and third declaration, respectively) should mean that Auerbach committed perjury and should be punished, and also since this is any Court in NY State (which includes SDNY), is secondarily guilty of a criminal misdemeanor which would relieve Auerbach of his license to practice law in NY State, and thus in the Federal Court system, which your Judicial Council controls. The second law is NY Judiciary §487 on "intent to deceive" any Court in NY State.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER LINDNER, Plaintiff -against- COURT SECURITY OFFICER (CSO) NEWELL, CSO MUSCHITIELLO, CSO JOHN DOE #1, CSO JOHN DOE #2, 2ND CIRCUIT COURT OF APPEALS CLERK MARGARET LAIN, ASSISTANT US MARSHAL (USM) JAMES HOWARD , USM BRIAN MURPHY, USM BETTY ANN PASCARELLA,WITNESS SECURITY S. JONES, CONGRESSIONAL AFFAIRS CHIEF D. DISRUD, US ATTORNEY PREET BHARARA, USM JOSEPH R. GUCCIONE, Defendants	**Civil Action No. 11 cv 08365 (AJN-MHD)** MOTION TO RECONSIDER AND PLAINTIFF RESPONSE TO AUSA COVERUP AND VIOLATION OF NY STATE LAW ON INTENT TO DECEIVE THE COURT

Was: Thursday, March 28, 2013 11:20 AM
Is: Tuesday, April 09, 2013 11:00 PM

The Honorable USDJ Alison J. Nathan
SDNY
500 Pearl Street
NYC, NY 10007

Re: **is:** Motion to Reconsider
was: "Plaintiff Request For Pretrial Conference Under Estoppel And Equitable Remedies Under The Law For Wrongs "

To the Honorable US District Judge Nathan:

Please see filings done by me earlier today on Pacer as #92, #93 and #94.

Summary of Plaintiff Reply to Defendant Response, with interspersed Memo of Law

To my dismay, I read Your Honor's ruling of March 26, 2013 which dismissed my complaint, and hereby request Your Honor to reconsider it, based upon the record which has perjury by the USMS General Counsel Auerbach (among other reasons).

I am gay, I have Asperger's Syndrome, and I witnessed first-hand that CSO Newell hit me, yet the CSO and the USMS deny that and refuse to turn over the tapes. And a Confidential Informant was told to perjure herself against me while she was testifying for the US Attorney, and the AUSA will not meet with me to discuss that, knowing that if I reveal her name, her life would be in danger. And I'm out of work, and a lawyer told me to take a federal case would require a $50,000 retainer, and Your Honor declares **beyond credulity** that "*in forma pauperis* status is denied for the purpose of an appeal."

Your Honor stands upon the premise that I had not exhausted my "administrative remedies", which based upon the evidence of USMS General Counsel Auerbach of Document 40 Filed 07/16/12 could have been made a half year ago; I chide Your Honor for untimely handling of this case. However, had Your Honor dismissed my case then based upon the truthfulness of the Honorable General Counsel Auerbach's sworn deposition "under the penalty of perjury", it would have been overturned since some 3 months later using the same bland phrase says such a document does exist. Thus, I believe Mr. Auerbach should be charged by Your Honor with both “intent to deceive” any Court in NY State under NY Judiciary §487 and with perjury.

I spoke to an expert in the field (to remain anonymous) who said USMS General Counsel is "testilying" and the Courts won't do anything. She said it was Perjury, and the reality is prosecutions are discretionary, so the US Attorney won't bring a case against USMS. However, under NY Judiciary §487 on "intent to deceive" any Court in NY State, Your Honor can do something, and make a finding as I have requested that USMS General Counsel Auerbach did have "intent to deceive" the SDNY ("any Court in NY State"), so that I can move on disbarment for a criminal misdemeanor and can move for treble damages in a separate suit.

I am reminded of the joke:

> "An executive asks his colleague: 'Did you sleep with my secretary?'
> The other man says 'No!'
> So the executive then says: 'Good, then you can fire her."

I thus ask if Your Honor has discussed this case with any other person, including clerks, who may have influenced Your Honor, which is a violation of judicial ethics, but also a clue as to who is behind stopping my suit, even before I can get a subpoena to show that I am not litigious, but am fighting back against several groups starting with IBM, and the USMS in interfering with the Court and tampering with witnesses.

Surely I should be allowed to do that, and have USMS Auerbach removed from his office with prejudice and have his license to practice in NY State removed. This will be a lesson to other Executive Officers who perjure themselves to help their colleagues, especially against a private citizen who has been wronged in an EEOC suit by IBM, with the assistance of USDJ Sullivan. Your Honor has been appointed for life with the consent of the US Senate: please put aside any thought of running for Circuit Judge or SCOTUS; forget about being pals with the President or fellow Judges, or the cool kids in the USMS or US Attorney's Offices. Accept Your Honor's fate to be an Article III Judge until retiring, and not being able to sit at the cool judges' table at lunch. Be a legal pariah who upholds the law. Your Honor has enough proof in the 1st and 3rd declarations by USMS General Counsel Auerbach of committing perjury to my detriment and without satisfactory explanation or without being subject to cross-examination by me in a deposition, as is my right under due process of the US Constitution. It is not that I am litigious (as Your Honor states in page 19 of 20), but that the USMS perjured themselves 3 times[9] and surely there should be a redress of grievances.

But part of my work is to get the subpoenaed testimony of a Confidential Informant (CI) "Ms. Sally Smith" who worked / testified for the same US Attorney Preet Bharara in a criminal case and was on that occasion confronted by 3 men in SDNY who asked the CI to perjure herself against me and falsely claim that I was threatening USDJ Sullivan. The 3 men also suggested that there would be harm to the CI if she did not do so. The US Attorney refuses to cooperate in getting this CI's testimony, nor will the DEA/ATF allow Ms. Smith to make any statement (in violation of 18 USC § 1512(b)(3)), even though the DEA/ATF allegedly employs her and sometimes feeds her illicit drugs as rewards and owes me money for when I laid out taxi fare for Ms. Smith to do a commute to the DEA/ATF on in NY State (various locations).

After all, if Your Honor is to believe that facts presented by the US Attorney and the USMS General Counsel, then there should be some penalty for misrepresenting them. I ask for my "day in Court," and

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[9] The 3 times of USMS perjury :

1. that the USMS investigated whether CSO Newell hit me
2. that there was no video taping at the 2nd Circuit Court of Appeals
3. that I did not file a complaint in 2010

due process, and the right to subpoena evidence. Below are the two seeming identical bland, but hopefully to Your Honor meaningful with teeth, declarations by Harwood:

5. The review of the FTCA claim records did not reveal any FTCA claims presented to the United States Marshals Service by plaintiff arising out of the incident described in the complaint.

I declare, under penalty of perjury pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Gerald M. Auerbach
General Counsel
United States Marshals Service
Arlington, Virginia 22202
(202) 307-9054

Executed on: 6/27, 2012

I declare, under penalty of perjury pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Gerald M. Auerbach
General Counsel
United States Marshals Service
Arlington, Virginia 22202
(202) 307-9054

Executed on: 10/12, 2012

Thus, Your Honor did not believe me [plaintiff pro se Lindner] when I said / wrote repeatedly that I filed some years earlier. And Auerbach states that he came to find out that I was correct:

5. On September 24, 2012, my office (the Office of General Counsel) learned that the Office of Inspection had received two complaints from plaintiff Peter Lindner. The first led to a case (#10-0519) being opened on September 30, 2010. This case was closed on October 20, 2010. The second led to a case (#11-0056-I) being opened and closed on November 3, 2010.

6. On October 4, 2012, my office obtained a copy of the complaints that led to the case openings referenced above in paragraph 5. These complaints were forwarded to my office by the Office of Inspection. Neither of these complaints was treated by the United States Marshals Service as an FTCA claim. Indeed, prior to October 4, 2012, neither of the complaints had been forwarded to the Office of General Counsel. Accordingly, neither of the complaints was entered into the United States Marshals Service's FTCA claims database. A true and correct copy of the complaint for case 10-0519 (as received by my office from the Office of Inspection) is attached hereto as Exhibit A, and a true and correct copy of the complaint for case 11-0056-I (as received by my office from the Office of Inspection) is attached hereto as Exhibit B.

Moreover, I also allege that the USMS lied to me and to my (ad hoc) lawyer Robert Ellenport, Esq. by saying the tapes of the CSO Newell hitting me in the 2nd Circuit Court of Appeals Courthouse do not exist, and that they (the USMS) could not substantiate my claim, presumably by Newell lying to a USM (a federal offense).

But to get into the matter of my allegedly faulty complaint of September 2010: it is standard practice in the DOJ and in the USMS that when a faulty complaint is filed, the receiving party (the USMS) would send in a document detailing the flaws, so that they may be corrected. This was done when I was alerted by the US Attorney that I had not exhausted my administrative procedures, and the USMS sent me a document to fill out on the entire matter.

So, Your Honor, **it is due to the accidental or deliberate with malice negligence of the USMS** that my 2010 claim was not correct.

In ancient Rome, when prayers were not said correctly, the supplicant would have to start from the beginning. In medieval England or later, when a trivial mistake was on a document, it would have to be redone. I note that even in the last 2 years the SDNY Pro Se Office would not accept a cross out on a document that I submitted (but they did allow "white-out"). Typically in legal documents, one makes the correction and initials it.

There are things called "scriveners error"[10], which thwart[11] the purpose of the parties. One of the parties is the US Government which has rules on filling out forms. OIG at DOJ was unable to give me the reference on that, but my limited experience shows that USMS does comply with returning for correction documents in 2012 which are missing information. Ostensibly the Government is there for the People, and not to thwart, injure the People and then to cover it up through various means, including perjury, intent to deceive the Court (which only applies in NY State but covers SDNY), assault, lying about videotapes.[12]

Your Honor should have had the foresight to allow me to subpoena the parties, so that The Court would see that they lied to The Court, and conspired to deprive me of my Civil Rights as a citizen, as an employee, and as a gay protected (now) by NY State and NYC, and hopefully soon by the US Government. This is as tragic as a black person petitioning the Court prior to *Brown v Board of Education* in 1951.

I note that I have today filed online a complaint to the DOJ OIG (attachment ___):

> **"This complaint is concerning:**
>
> - DOJ Employee or Program"

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[10] " Black's Law Dictionary defines "scrivener's error" as a synonym for "clerical error." A "clerical error" is one "resulting from a minor mistake or inadvertence, esp. in writing or copying something on the record, and not from judicial reasoning or determination." Black's Law Dictionary 563 (7th ed.1999). Examples of clerical, or "scrivener's," errors include "omitting an appendix from a document; typing an incorrect number; mistranscribing a word; and failing to log a call." Id. Here, the parties apparently had Count 1, Conspiracy, in mind before and after the transcription. The mistake was not one of transcription, but of legal knowledge or analysis. "
[356 F.3d 761: *USA, Plaintiff-appellee, v. James R. Gibson, Defendant-appellant*, US Court of Appeals, Seventh Circuit. - 356 F.3d 761, Argued September 15, 2003 Decided January 28, 2004]
http://law.justia.com/cases/federal/appellate-courts/F3/356/761/539813/#fn3

[11] " Mistake by preparer of a document that results in intent of the parties being thwarted "
http://law.yourdictionary.com/scrivener-s-error

[12] SCOTUS has ruled that sometimes, and I believe now is such a time, that the defense must provide proof that no videotape exists and the burden is upon them. I feel even if the burden were upon me, I have met that with my affidavit beyond a reasonable doubt that said video existed. Here is how the Supreme Court of the United States ruled:

> " At the same time, the Supreme Court also recognized “The ordinary default rule, of course, admits of exceptions.” “For example, the burden of persuasion as to certain elements of a plaintiff's claim may be shifted to defendants, when such elements can fairly be characterized as affirmative defenses or exemptions. See, e.g., *FTC v. Morton Salt Co*., 334 U.S. 37, 44-45 (1948). Under some circumstances this Court has even placed the burden of persuasion over an entire claim on the defendant. See *Alaska Dept. of Environmental Conservation v. EPA*, 540 U.S. 461 (2004).” Nonetheless, “[a]bsent some reason to believe that Congress intended otherwise, therefore, [the Supreme Court] will conclude that the burden of persuasion lies where it usually falls, upon the party seeking relief.”"
> http://en.wikipedia.org/wiki/Legal_burden_of_proof#Criminal_law

I feel quite properly that Your Honor has enough information to proceed with this case to discovery since it has been proven that that I submitted the claim in the proper timeframe to the USMS and DOJ, despite the USMS General Counsel's first 2 (of 3) sworn statements to the contrary. If the Allen charge[13] had a

Assistant US Attorney (AUSA) Harwood asked Your Honor to not only refuse to help "arrange" a meeting of the USMS General Counsel's Office, the ADA Bharara, the USMS's vendor's lawyers Littler Mendelson and me to discuss getting the evidence which Littler refuses to allow, and which the US DOJ General Counsel Auerbach insists the US Government requires, but also to dismiss[14] this case without allowing evidence to be discovered, witnesses to be questioned as to illegal conspiracy to cover-up their assault and battery upon me, and threats upon a DEA/ATF Confidential Informant (CI) and offering to induce the CI to plant Child Porn in my apartment. Whether or not *Bivens*, or FTCA Claims under *Logue v US*, applies the mere fact that I was assaulted in the 2nd Circuit Court of Appeals at 500 Pearl Street by CSO Newell who then **denied it to the USMS** (a federal Law Enforcement Officer), and that the USMS Howard claimed no videotapes exist of the incident, and thirdly that a CI was threatened to suborn perjury against me whilst she (Ms. Sally Smith) was in the SDNY Courthouse merit an examination. Additionally, the USMS General Counsel Auerbach wrote 3 declarations under the "penalty of perjury" with the 3rd one contradicting the first two, in that the first two declared I (Plaintiff Lindner) had not filed any complaint to the USMS prior to 2012, and the third indicating that I had filed such complaints to the DOJ who forwarded it[15] to the USMS in 2010, which was indexed (confirmation upon my phone call to that department reporting to Auerbach and located in or about Virginia and/or Washington DC) by my last name, but was not indexed in a supposed (master) index of claims maintained by Auerbach. That Auerbach was willing to swear under perjury penalties that his record system was adequate and comprehensive enough to toss out my claim (which I later swore I did file) shows a callous disregard to the opinions of mankind, and to the Court in particular.

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[13] The text of the modified Allen charge is:

> " **Modified or "mild" Allen Charge**
> You have heard a substantial amount of testimony in this case, and a considerable amount of time and effort has been expended in bringing this evidence before you. Careful consideration of all such evidence might take quite a bit of your time. When you enter the jury room it is your duty to consult with one another, to consider each other's views, and to discuss the evidence with the objective of reaching a just verdict if you can do so without violence to individual judgment. Each of you must decide the case for yourself but only after discussion and impartial consideration of the evidence with your fellow jurors. Do not hesitate to re-examine your own views and to change your opinion if you are wrong, but do not surrender your honest belief as to the weight and effect of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.
>
> With these additional instructions, you are requested to deliberate in an effort to arrive at a verdict that is acceptable to all members of the jury if you can do so without doing violence to your conscience. Do not violate your conscience but continue to deliberate.
>
> Annotations:
> This charge is taken from *Howard v. State*, 941 S.W.2d 102, 123-124 (Tex. Crim. App. 1996) and is a modified copy of the charge cited in *Lowenfield v. Phelps*, 484 U.S. 231, 235, 108 S.Ct. 546, 98 L.Ed.2d 568 (1988). "
> [Published on Texas District & County Attorneys As
> sociation]
> http://www.tdcaa.com

[14] See Attachment 1: Document 87 letter of AUSA Harwood 2/7/13.

[15] The letter is 11 pages long and is attached as 2 (two) separate documents entitled Parts 1 and 2 as in:
" **Attachment 6 Part 1: 11 page letter to USMS in Sep 2010**

(too large to fit within 4meg limit of Pacer, and is stored as a separate exhibit)"

Also: The US Attorney Harwood refuses to meet with me or the confidential informant, which raises the question of why the willful ignorance? And that goes to whether the US Attorney did so conspire with the 3 alleged men who tried to suborn perjury from the CI, and also aided and abetted them before and after the fact by informing the men

- Beforehand that the CI would be in the Courthouse testifying and then
- After the fact,
  - refusing to confirm the CI worked / testified for the US Attorney's Office
  - refusing to meet or communicate in a secure way to give the real name of the CI
  - preventing the CI from testifying or even talking to me about the events (plural)

Does Your Honor have no interest in making sure the US Attorney stop[16] soliciting CI's to perjure themselves?

Executive Branch actions on destroying Executive Branch evidence

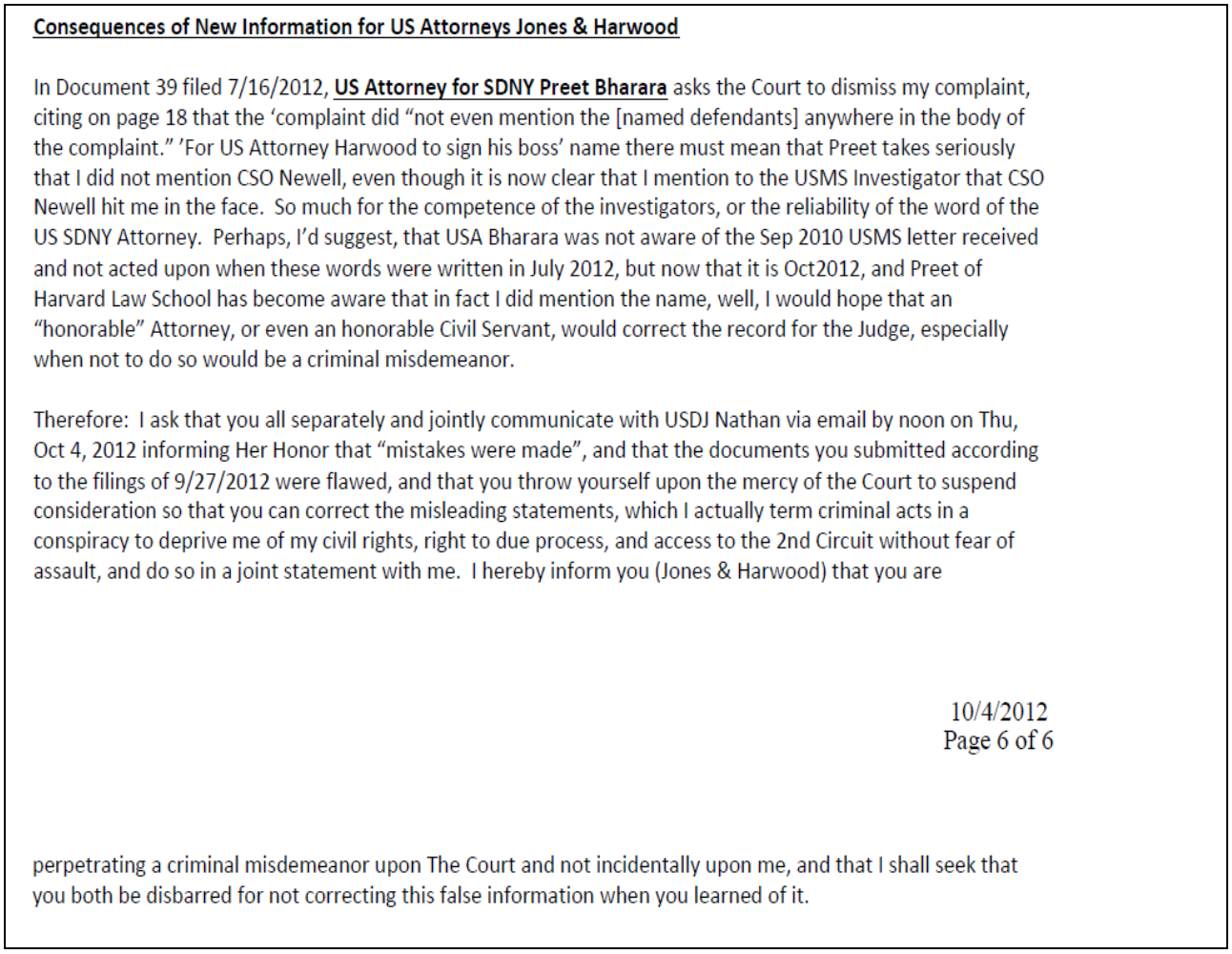
When the dishonorable Richard Nixon called Watergate a third rate burglary, and then said that he should have burned the evidentiary tapes on the White House front lawn, there was perhaps legal justification for that. Morally, politically, and Constitutionally it was reprehensible.

Executive Branch actions on destroying Judicial Branch evidence

ADA Harwood's request is equally or more reprehensible since he seeks to destroy the video tapes that **The Court** has installed, with the Court being a different branch of government than the Executive Branch. If I were a Judge, I'd consider that a violation of the separation of powers to have the Executive Branch attempt to destroy the Judicial Branch's records, and as such, should be a candidate for a Judicial reprimand and whatever sanctions can be accorded to prevent such Executive mischief from (the Justice ! Department) befouling The Courts.

Moreover, in my conversation this week with USMS General Counsel Auerbach on Fri, Feb 1, 2013, Auerbach suggested arranging a meeting with Harwood. Instead, Harwood seeks to not meet, and seeks to have this entire matter of his defendants, his clients not have to account for their actions. The actions are covering up misdeeds of the 2 CSOs by one of them hitting me, both of them witnessing CSO Newell apologizing for doing so, and USM Howard lying to my attorney (at the time) Robert Ellenport, Esq. that no such tapes are kept. Previously, the US Government (in the 2 forms of the USMS and the US Attorney) have conspired to mislead the Court by saying I filed no prior notice administratively before bringing my instant suit 11 cv 8365 *Lindner v. CSO Newell, et al.*, which USMS General Counsel Auerbach falsely swore under the penalty of perjury that I never filed with the USMS, only to blandly recant his sworn testimony. I humbly suggest that The Court should first begin to have both Harwood and Auerbach cited for perjury and violation of NY Judiciary §487 on "intent to deceive" any Court in NY State (of which the SDNY is such a Court, under law and precedent [citations omitted]). I gave formal notice to US Attorney for the SDNY Preet Bharara (see Attachment 3), but (as usual) he ignored my request. I made this request in greater detail, that the US Attorney should notify the Court of their error, and throw themselves upon the mercy of the Court, which they did not, thus compounding the error, its consequences to me and this case, and shows a lack of remorse. Here's what I wrote on Oct 4, 2012:

[16] I rely upon the concept that in a conspiracy, each of the conspiring people are equally guilty. As a Judge once told [me] as a Jury member "It's legal to rent a car. But if you rent a car to be used in a robbery, you are culpable." If the US Attorney informed one of the 3 men that the CI would be in the SDNY courthouse, so that the 3 men could threaten the CI, then the US Attorney would also be guilty.



Consequences of New Information for US Attorneys Jones & Harwood

In Document 39 filed 7/16/2012, **US Attorney for SDNY Preet Bharara** asks the Court to dismiss my complaint, citing on page 18 that the 'complaint did "not even mention the [named defendants] anywhere in the body of the complaint." 'For US Attorney Harwood to sign his boss' name there must mean that Preet takes seriously that I did not mention CSO Newell, even though it is now clear that I mention to the USMS Investigator that CSO Newell hit me in the face. So much for the competence of the investigators, or the reliability of the word of the US SDNY Attorney. Perhaps, I'd suggest, that USA Bharara was not aware of the Sep 2010 USMS letter received and not acted upon when these words were written in July 2012, but now that it is Oct2012, and Preet of Harvard Law School has become aware that in fact I did mention the name, well, I would hope that an "honorable" Attorney, or even an honorable Civil Servant, would correct the record for the Judge, especially when not to do so would be a criminal misdemeanor.

Therefore: I ask that you all separately and jointly communicate with USDJ Nathan via email by noon on Thu, Oct 4, 2012 informing Her Honor that "mistakes were made", and that the documents you submitted according to the filings of 9/27/2012 were flawed, and that you throw yourself upon the mercy of the Court to suspend consideration so that you can correct the misleading statements, which I actually term criminal acts in a conspiracy to deprive me of my civil rights, right to due process, and access to the 2nd Circuit without fear of assault, and do so in a joint statement with me. I hereby inform you (Jones & Harwood) that you are

10/4/2012
Page 6 of 6

perpetrating a criminal misdemeanor upon The Court and not incidentally upon me, and that I shall seek that you both be disbarred for not correcting this false information when you learned of it.

Figure 1 Please correct your intent to deceive the Court in NY State by giving information on 9-27-2012 that you know now is false on 10-3-2012 (or earlier).pdf

Secondarily, given that the Court has entrusted its tapes to the USMS, and the USMS is claiming that I have not turned the tapes over to Auerbach, and USMS Howard (probably falsely) claims that no such tapes exist, then I humbly petition the Court to ORDER a habeas corpus to the USMS on the "tapes" (instead of on a "body").

Medical Damages versus Intimidation versus Assault

I find it (again, sadly) incredible that Your Honor does not distinguish between assault, intimidation, and medical damages. A judge once said in local court to a person that if he were to touch her, the guy should see what will happen to him; and he did not touch the female judge on the bench. What the Judge was showing is that merely touching her would be criminal; I don't think she was then going to sue for medical damages. So it puzzles me when Your Honor writes "His injuries are insufficient to state an excessive force claim."[p.19 of Your Honor's 3/26/2013 ORDER] I think the injuries are sufficient to show intimidation. In fact, if George Wallace[17] barred the entry of blacks to a school, would Your Honor write

[17] George Wallace had guards to the left and right of him. I venture to say that CSO Newell's hitting me with impunity meant also if I were to hit him back, I'd be arrested for assaulting an Officer (of the Peace?) and also have a team of USMS officers jump on me, perhaps beating me with batons, just like the Southern Sheriffs did with civil rights marchers.

" The Stand in the Schoolhouse Door took place at Foster Auditorium at the University of Alabama on June 11, 1963. George Wallace, the Governor of Alabama, in a symbolic attempt to keep his inaugural promise of "segregation now,

the there was no touching, thus the black children's "injuries are insufficient to state an excessive force claim"? Really, Your Honor, what world is Your Honor in that it is okay to have a CSO use force or even intimidation to prevent a redress of grievances?

Clearly Your Honor and I have a difference of opinion, which can be clearly settled by an experiment, such as having an undercover officer hit a federal Law Enforcement Officer in the head with small object like a nameplate, and see how the federal Law Enforcement Officer reacts. It could be a Gedanken ("thought") experiment or done in real life, with a variety of officers. Won't some of them react violently and some may caution not to do it again?

I recall Saddam Hussein keeping English citizens hostages, and stroking[18] their boy's head. It gave Americans a chill. Of course, that was not excessive force, but one realized that if the boy objected in any way, they all may have been tortured in addition to being killed as human shields.

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segregation tomorrow, segregation forever" and stop the desegregation of schools, stood at the door of the auditorium to try to block the entry of two black students, Vivian Malone Jones and James Hood.

The incident brought George Wallace into the national spotlight. "

http://en.wikipedia.org/wiki/Stand_in_the_Schoolhouse_Door

[18] I has been 19 years since the 5 year old was rescued by Jesse Jackson, and it is told in this article as "The haunting images of a clearly terrified Stuart Lockwood clad in a football top and stood before the Iraqi dictator, who playfully ruffled the child's hair, provoked outrage and consternation across the West."

http://www.dailymail.co.uk/news/article-1165186/British-child-hostage-refused-sit-Saddams-knee-reunited-rescuer-Jesse-Jackson-19-years-ordeal.html#ixzz2OsI6ttby

How much force is non-excessive when I ask the US Marshall (who turned out to be a CSO) his name? Should I just have been pushed away? Would it be okay for the CSO to grab my elbow and escort me out? Or would the right thing have been for the CSO to

a) tell me his name?
or
b) ask me to leave?,

rather than assaulting me and then committing battery upon me.

I think if Your Honor uses logic, then clearly this is not and should not be the standard for federal Law Enforcement Officers for the streets. It is even less appropriate for a federal Law Enforcement Officer to hit a civilian who asks the Officer's name in the 2nd Circuit Court of Appeals. Or would Your Honor suggest that hitting a civilian in the Court is okay, and it is even more justified in a street situation where a civilian asks the name of an Officer who makes a derogatory remark during a reporting of a potential crime? Is Your Honor suggesting perhaps NY State should allow officers to use the "N" word when a black person complains in a street situation, but not in a Court, or is it okay to Your Honor in both? As the Supreme Court of the United States Justice Scalia[19] asked[20] this week in the gay rights case:

Should the Executive Branch protect malfeasance or protect the wrongdoers?

AUSA Harwood clearly does not care if the USMS lies, or the CSO lie to the USMS, or if the CSO hit me, or if the Court's tapes are willfully destroyed, since all Harwood cares about is getting his clients, including USMS Guccione, found innocent or have the charges / case against Guccione dropped with prejudice.

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[19] Justice Scalia is an unabashed homophobe by saying for instance that moral objections to homosexuality were sufficient justification for criminalizing gay sex since "Many Americans do not want persons who openly engage in homosexual conduct as partners in their business, … or as boarders in their home…. They view this as protecting themselves and their families from a lifestyle that they believe to be immoral and destructive.":

> " Let's throw gay people in jail because some people don't like them
>
> In his dissent in Lawrence, Scalia argued that moral objections to homosexuality were sufficient justification for criminalizing gay sex. "Many Americans do not want persons who openly engage in homosexual conduct as partners in their business, as scoutmasters for their children, as teachers in their children's schools, or as boarders in their home," he wrote. "They view this as protecting themselves and their families from a lifestyle that they believe to be immoral and destructive." "
> http://www.motherjones.com/politics/2013/03/scalia-worst-things-said-written-about-homosexuality-court
> http://www.law.cornell.edu/supct/html/02-102.ZD.html

[20]

> " JUSTICE SCALIA: Okay. So I want to know how long it has been unconstitutional in those –
> MR.OLSON: I don't -- when -- it seems to me, Justice Scalia, that –
> JUSTICE SCALIA: It seems to me you ought to be able to tell me when. Otherwise, I don't know how to decide the case.
> MR. OLSON: I -- I submit you've never required that before. When you decided that -- that individuals -- after having decided that separate but equal schools were permissible, a decision by this Court, when you decided that that was unconstitutional, when did that become unconstitutional?
> JUSTICE SCALIA: 50 years ago, it was okay?
> MR. OLSON: I -- I can't answer that question, and I don't think this Court has ever phrased the question in that way.
> JUSTICE SCALIA: I can't either. That's the problem. That's exactly the problem."
> [Prop 8 arguments, page 41, lines 5-23, *Hollingsworth v Perry*, SCOTUS, No. 12-144, Tuesday, March 26, 2013]
> http://www.usatoday.com/story/news/politics/2013/03/26/transcript-supreme-court-prop-8-gay-marriage/2021377/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+usatoday-NewsTopStories+(News+-+Top+Stories)

This is not the way to run a US Government.

I allege that CSO Newell did commit assault and battery upon me in the 2nd Circuit Court of Appeals waiting line, and apologized for it in front of CSO Muschitiello. But when I reported it to the USMS, CSO Newell denied it, and the USMS is dumb enough not to ask CSO Muschitiello, or more likely, prudently did not seek cross verification, which would pit two of their employee/vendors/deputies against each other. However, USMS Howard sought to hide the clear evidence of it. There is no doubt in my mind, that had I assaulted CSO Newell, and was later questioned and denied it, those tapes would have materialized, and I would have been prosecuted for assault, battery, lying to a federal Law Enforcement Officer (did I leave out any charges?).Sometimes, a federal Law Enforcement Officer (or a policeman) lies in order to catch a lawbreaker, or lies to cover up crimes committed by their fellow federal Law Enforcement Officers. In this case, USM Howard lied to cover up his vendors, and his superior's involvement (that of USMS Guccione).

I was approached by two USMS agents in my apartment, who tried to lure me to invite them into my apartment, which I refused unless they had a warrant. I spoke to them through the partially open door, and I videotaped[21] it (see Figure 2). The 2 USM's tried to say that they were tired of standing, so I sat down on the floor, and asked them to do likewise, which they refused.

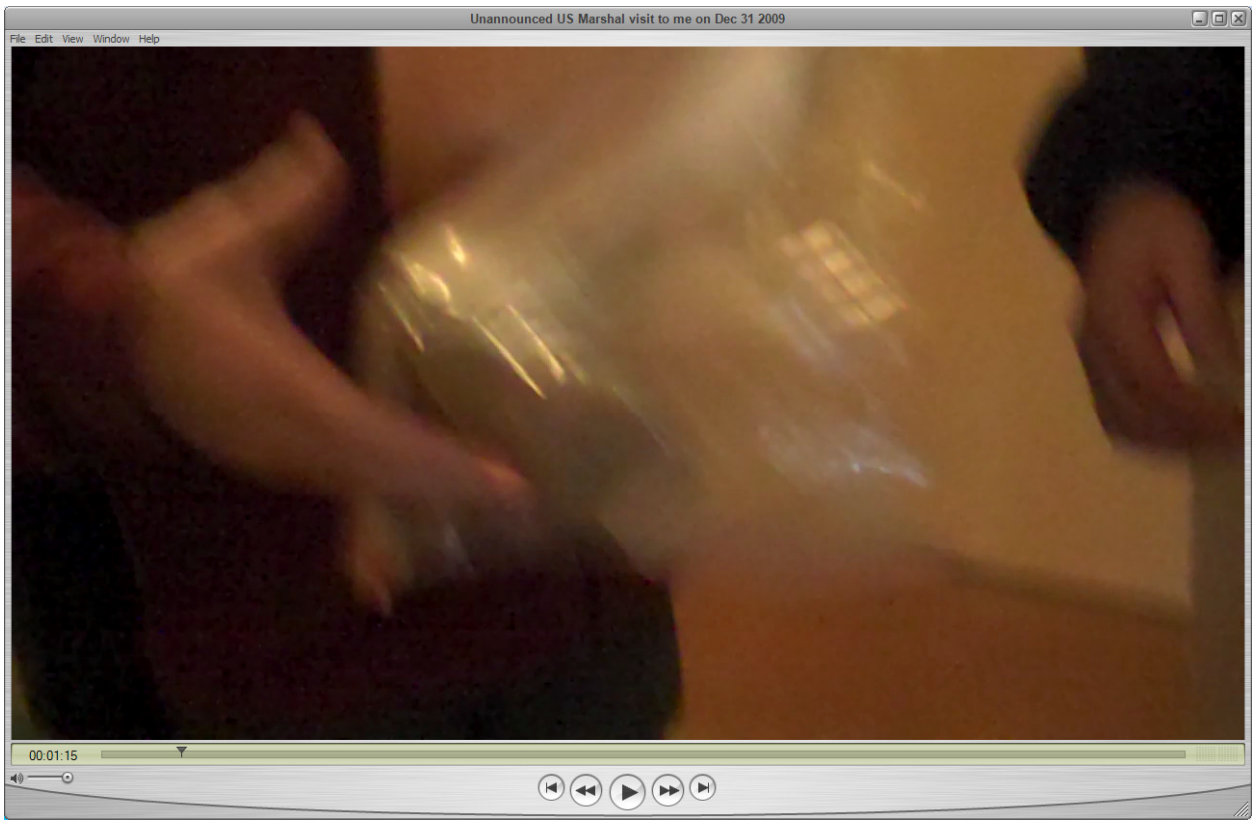


Figure 2 USMS Agents arrive unannounced and I attempt to give them documents with DNA evidence, which they take and then immediately return to me

I note that I have their faces in the video, but given that they are federal Law Enforcement Officer s, I have not published their faces for their protection.

[21] The title is " Unannounced US Marshal visit to me on Dec 31 2009.MP4 "

So, there you have it: The Executive Branch violates the law, has evidence, denies its existence and / or destroys it, and then seeks to have the matter dismissed so that their wrongdoing does not get an airing in open Court.

USMS asks Plaintiff for a tape that the USMS has and could get, but refuses to provide

Worse, USMS General Counsel Auerbach could have formally requested said tape from his "colleagues" (aka unindicted co-conspirators) in NYC, but rather requests me to get it for him via The Court, and then has his colleagues' lawyer AUSA Harwood **refuse** to turn said tapes over, either under FOIA[22] or by asking Your Honor to dismiss this case without evidence.

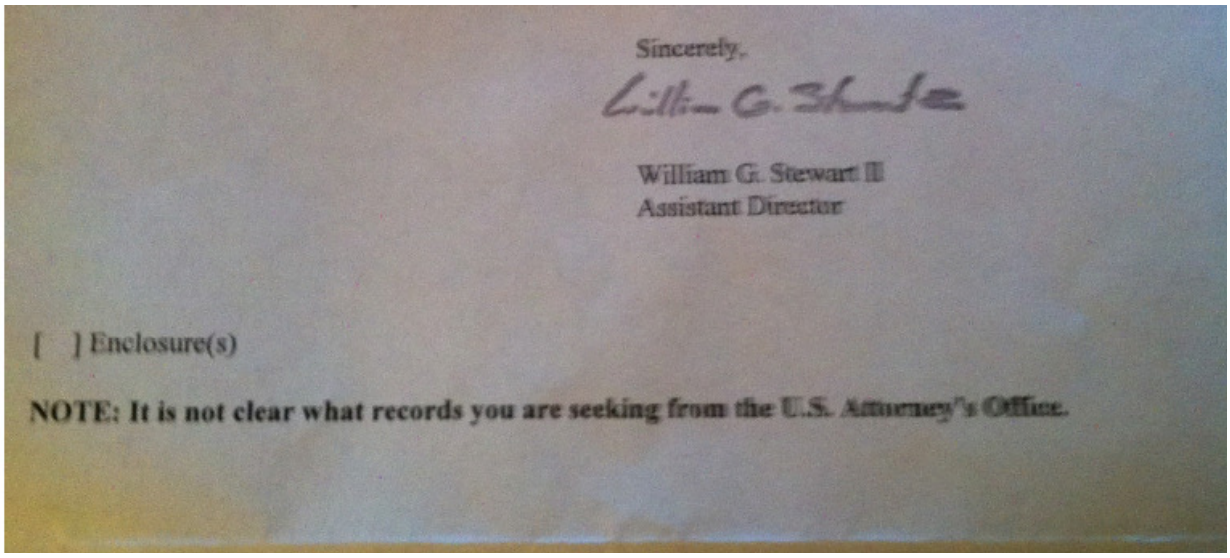
It is clear to me that several parties are seeking to jointly conspire (I use that word advisedly) to cover up the actions of both CSO Newell, the words of CSO Muschitiello (who may or may not have been even interviewed by the USMS, but whom both CSOs and the USMS would prefer not be available for deposition by me or by the Court), and the USMS Guccione's actions in covering this up and possibly

[22] Note that I filed a "Freedom of Information" Request (redacted) as "Case 1:11-cv-08365-AJN-MHD Document 50-3 Filed 09/19/12 Page 1 of 17" on Monday, December 06, 2010 7:32 AM. In it, I make a specific request for the tapes of "**Friday August 20, 2010**" [**emphasis** in the original]:

4. Peter Lindner & assorted US Marshals and Court Security Officers (CSOs) and others: Tape of incidents at 500 Pearl St, NYC, at Clerk's Office for SDNY and in front of US Marshal office where Clerk complained I was stalking him, and I tried to file a complaint to US Marshal, and USM tried to intimidate me, including a large black man, without a badge and with storm trooper boots, all in black. I requested that those tapes be preserved, but USDJ Sullivan and USM refused.

5. Peter Lindner (me) & Court Security Officers (CSO Newell and CSO Muschitiello): Tapes of incident of CSO allegedly assault / battery upon Peter on 3rd floor office area waiting line for Clerk of the Second Circuit Court of Appeals on **Friday August 20, 2010** from about 3pm to 5pm, including Peter Lindner entering Courthouse, going to Pro Se Office on 2nd floor, and Second Circuit (on 3rd floor?) line for filing documents. Lindner talking to 2nd Circuit Clerks, CSO Muschitiello, and then CSO Newell who refused to give his name and then pushed the name tag touching my face.

However, the DOJ says despite this specificity, "It is not clear what records you are seeking"


Sincerely,

William G. Stewart II
Assistant Director

[ ] Enclosure(s)

NOTE: It is not clear what records you are seeking from the U.S. Attorney's Office.

"masterminding" the operation of intimidation of me, followed by cover up by USM Howard, et al. What I cannot yet provide is an additional attempt to arrest me for false pretenses[23], possibly because the "hearsay" is false or the alleged undercover CI (Confidential Informant) was "instructed and directed" not to firstly write down on an affidavit, and later told not to speak about the matter at all with me.

Request for Sanctions until tapes are turned over to Plaintiff

I ask that Your Honor sanction the USMS monetarily out of their personal expenses, without resort to contributions by other parties, in a substantial amount to get them to turn over the tapes which the USMS General Counsel claims he needs to proceed on my administrative claims, and which the lack of said tapes allows Harwood and Akal to maintain that such events did not occur and that said tape(s) do not exist. If Your Honor can ORDER that the defendants be jailed until they turn over the tapes, that would be acceptable, and within the bounds of case law of how tapes are procured by the US Government from reporters.

Request for a finding of "intent to deceive" by several Officers of the Court

I also request Your Honor to certify that Document 87 (see attachment 1) contains a deliberate "intent to deceive" by stating that I did not file an administrative "cure" until July 16, 2012, when Document 62 has both General Counsel Auerbach and AUSA Harwood that I submitted my claim to the DOJ which forwarded it to the USMS, and then I followed it up by writing to the USMS in Sep 30, 2010 and Nov 3, 2010. Thus, Auerbach **twice** (June 27, 2012 and Sep 20, 2012) **wrongly** informed the Court **under penalty of perjury** that I never filed a claim "prior to July 16, 2012"

3. As a routine business practice, this office maintains a record of each such claim. The claims are indexed by claimant.

4. On June 26, 2012, this office searched the FTCA claim records to determine whether a claim was presented to the United States Marshals Service by plaintiff arising out of the incident described in the complaint.

5. The review of the FTCA claim records did not reveal any FTCA claims presented to the United States Marshals Service by plaintiff arising out of the incident described in the complaint.

I declare, under penalty of perjury pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Gerald M. Auerbach
General Counsel
United States Marshals Service
Arlington, Virginia 22202
(202) 307-9054

Executed on: 6/27/, 2012

Figure 3 Document 40 DECLARATION of Gerald Auerbach 16Jul2012.pdf

[23] I am getting tired of repeating this. Let the CI speak on the record, under oath, via a subpoena / Court ORDER. The attempt to arrest me alleged was by:

- Planting child porn in my apartment via the CI under control of the ATF
- Three men in the SDNY Courthouse approaching the CI whilst she was testifying for the US Attorney in a criminal trial, and asking her to suborn perjury that I was physically threatening USDJ Sullivan. And the 3 men proceeded to intimidate and threaten said CI.

4. On September 18, 2012, this office again searched the FTCA claim records to determine whether plaintiff had ever submitted an FTCA claim to the United States Marshals Service.

5. The review of the FTCA claim records revealed that, prior to July 16, 2012, plaintiff had never submitted any FTCA claims to the United States Marshals Service — whether arising out of the alleged assault described in the complaint here or otherwise.

[…]

I declare, under penalty of perjury pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Gerald M. Auerbach
General Counsel
United States Marshals Service
Arlington, Virginia 22202
(202) 307-9054

Executed on: 9/20/, 2012

Figure 4 Document 57 Exhibit by Auerbach Filed 22 Sep2012 Reply by US Atty Harwood to dismiss.pdf

[1] I have confirmed that: (1) the USMS's Office of Inspection received two complaint letters from Plaintiff; and as a result of those letters (2) the Office of Inspection opened investigations on September 30, 2010, and November 3, 2010. However, neither

Figure 5 footnote in Document 62 Filed Sep 25 2012 by US Atty Harwood that now reveals Lindner filed in Sep2010.pdf

In other words: I filed with the US Department of Justice, who/which is in charge of the USMS. DOJ forwarded my filing with the USMS on Sep 30, 2010, yet the USMS both refused to reply to DOJ (their ostensible superior) with a comment, or take that letter seriously, and compounded it by not answering me, and then despite USMS Auerbach's false statement of June 27, 2012 that the USMS

> "3. As a routine business practice, this office maintains a record of each such claims. The claims are indexed by claimant.",

the USMS did **not file my claim by my name** and somehow "lost" it, even though the **department that had it reports directly to Auerbach**. I'm a pro se litigant, but I thought the penalties of perjury should apply to Auerbach also, and Harwood should not then take the position that perjury by his witness should be ignored by The Court. Also: if Harwood gets to submit sworn affidavits as evidence to the Court, it may well be said that the Discovery Phase of the jury trial in 11 cv 8365 *Lindner v. CSO Newell, et al.* has begun, but that Harwood only allows himself to submit evidence, and both Harwood and Akal seek to stop other evidence unfavorable to their lying clients be admitted. Is this not a double standard? I don't think it's too strong to say that Auerbach is lying when he submitted a 3rd affidavit that contradicts his first two, and that USMS Howard tells an Officer of the Court (Robert Ellenport, Esq.) that no video tapes exist of CSO Newell assaulting me, and that CSO Muschitiello is not questioned as to whether he observed CSO Newell both assaulting me and hearing/seeing CSO Newell apologize to me for said assault.

I note that when an organization has 2 sets of books: one for itself, and one for the auditors, then the organization is usually corrupt. For the USMS General Counsel Auerbach to be in control of "2 sets of books"[24] on complaints, and swear under perjury that no such complaint was found under my name

[24] In Wikipedia, the entry in full is:

"Lindner", when in fact my phone call to the other USMS office reporting to Auerbach found the "Lindner" complaint in a few minutes. This, to me, suggests that the USMS has a secret file that the USMS can swear under the penalty of perjury was exhaustively searched, while a simple search of the 2nd set of files reveals the truth. This " routine business practice" of keeping 2 separate sets of books is a violation of GAAP Generally Accepted Accounting Principles, aka a cover-up, aka a sham operation.

The DOJ has replied that the DOJ sent the USMS my complaint on Sep 13, 2010, which is in my filing of "Document 50-1 Filed 09/19/12 Page 8 of 17"

"Two sets of books

The concept of "two sets of books" refers to the practice of attempting to hide or disguise certain transactions from outsiders by having a set of fraudulent books for official use and another, the real set, for personal records.

See also

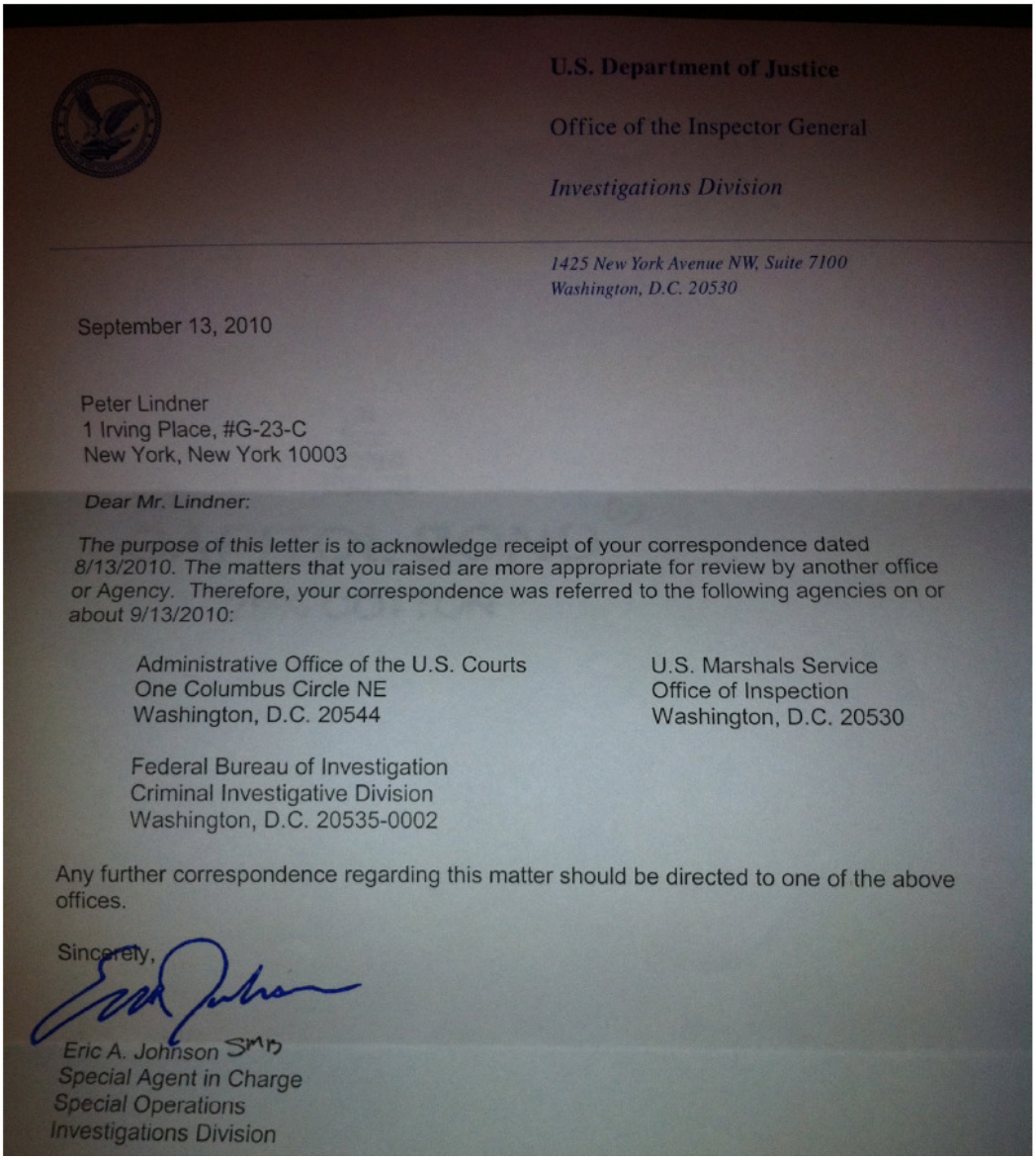
- Tax evasion
- Accounting ethics

References

- http://goliath.ecnext.com/coms2/gi_0199-5078441/Keeping-two-sets-of-books.html

"

http://en.wikipedia.org/wiki/Two_sets_of_books



U.S. Department of Justice

Office of the Inspector General

Investigations Division

1425 New York Avenue NW, Suite 7100
Washington, D.C. 20530

September 13, 2010

Peter Lindner
1 Irving Place, #G-23-C
New York, New York 10003

Dear Mr. Lindner:

The purpose of this letter is to acknowledge receipt of your correspondence dated 8/13/2010. The matters that you raised are more appropriate for review by another office or Agency. Therefore, your correspondence was referred to the following agencies on or about 9/13/2010:

Administrative Office of the U.S. Courts
One Columbus Circle NE
Washington, D.C. 20544

U.S. Marshals Service
Office of Inspection
Washington, D.C. 20530

Federal Bureau of Investigation
Criminal Investigative Division
Washington, D.C. 20535-0002

Any further correspondence regarding this matter should be directed to one of the above offices.

Sincerely,

Eric A. Johnson SMD
Special Agent in Charge
Special Operations
Investigations Division

I guess the SDNY has one set of rules for the USMS and the DOJ when they make false statements with intent to deceive, and a second set of tougher rules for a pro se litigant who tells the truth.

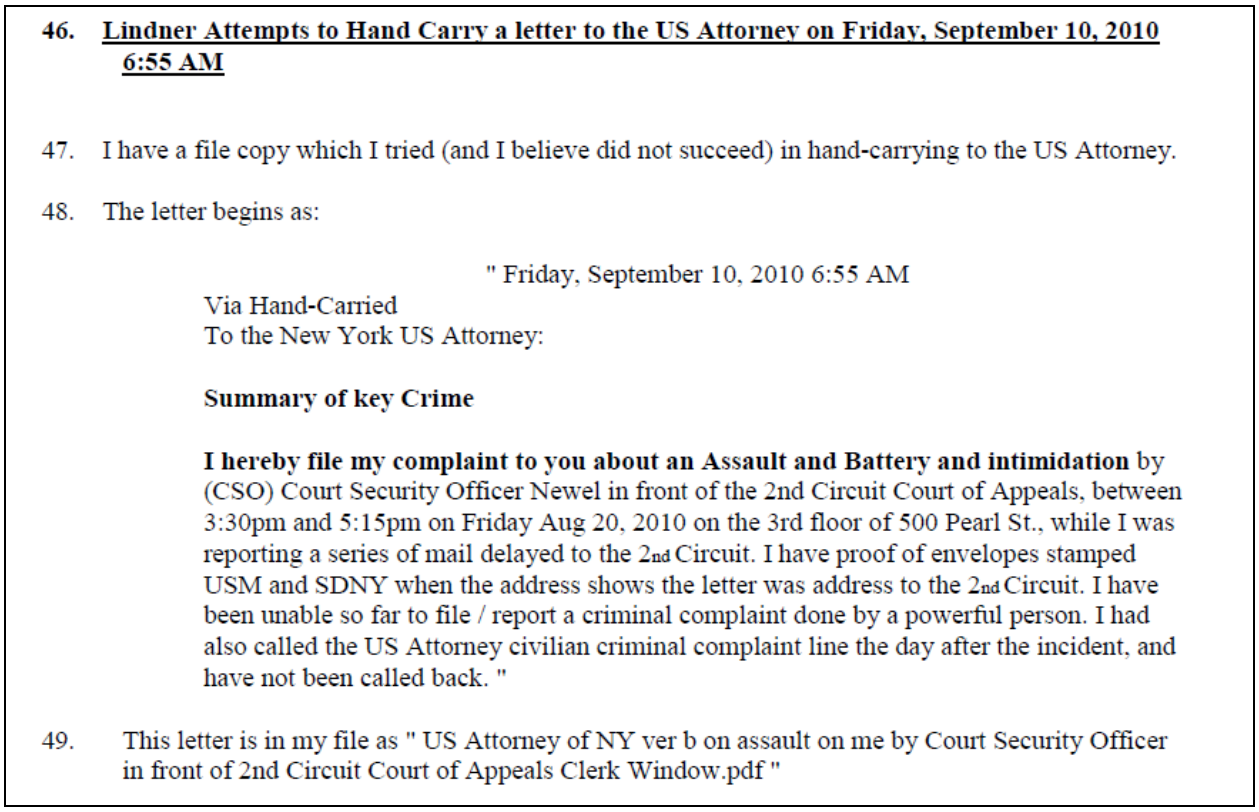
This matter of my filing the claim administratively to DOJ in Sep2010 was supposedly cleared up by my sworn affidavit where I swore under penalty of perjury that:

> 10) To conclude: if the USMS admits that they received 3 notices of my claim, 2 from DOJ and 1 from me, as early as Sep 2010, then the *Pascale* precedent would allow my suit to proceed without being time-barred, which the US DOJ has admitted it wrongly stated to the "Panel"
>
> 11) I am upset also that the US Attorney would try to, as I see it, deceive the Court by saying that acceptance of my claim in Sep2010 would have had no effect, when in fact as I understand it, *Pascale* says it does.

Figure 6 Document 63 Filed Sep 25, 2012 Affidavit by Lindner saying Sep 2010 filing with USMS vital under Pascale precedent.pdf

Hand service of Complaint to US Attorney refused

I note in my affidavit of Document 50-1, that I tried to file an administrative complaint about the 2 CSO's and they refused to take a letter, call up the US Attorney, or any reasonable thing that a firm would do if they wanted the truth:



46. **Lindner Attempts to Hand Carry a letter to the US Attorney on Friday, September 10, 2010 6:55 AM**

47. I have a file copy which I tried (and I believe did not succeed) in hand-carrying to the US Attorney.

48. The letter begins as:

" Friday, September 10, 2010 6:55 AM
Via Hand-Carried
To the New York US Attorney:

Summary of key Crime

I hereby file my complaint to you about an Assault and Battery and intimidation by (CSO) Court Security Officer Newel in front of the 2nd Circuit Court of Appeals, between 3:30pm and 5:15pm on Friday Aug 20, 2010 on the 3rd floor of 500 Pearl St., while I was reporting a series of mail delayed to the 2nd Circuit. I have proof of envelopes stamped USM and SDNY when the address shows the letter was address to the 2nd Circuit. I have been unable so far to file / report a criminal complaint done by a powerful person. I had also called the US Attorney civilian criminal complaint line the day after the incident, and have not been called back. "

49. This letter is in my file as " US Attorney of NY ver b on assault on me by Court Security Officer in front of 2nd Circuit Court of Appeals Clerk Window.pdf "

Figure 7 page 11 of 17 from Document 50-1 Plaintiff Affidavit In Addition To Reply Against Motion To Dismiss.pdf

Being a member of the Bar

I believe it is a crime to misrepresent oneself as a member of the bar. I should have had a lawyer appointed to represent me, since there criminal acts were done against me by the Government. However, I am not a lawyer. I do not have even a reasonable first year Law Student's knowledge of law, and to boot, I have a mental disability of Asperger's Syndrome. Thus, it is incredible **and sad** that Your Honor falsely writes that "Plaintiff is an experienced litigator, having brought six actions (including the present one) in this district." [p. 19 of Document 90, ORDER, 3/26/2013] So, it is an insult to me that Your Honor claims[25] I can represent myself. I can't defend myself nor conduct successful actions against those who (willfully) wrong me. For example, two different lawyers lied to the SDNY Court, and I could not get a successful action against them for their perjury and/or intent to deceive. **I need a lawyer.**

Then Your Honor (completely from left field) writes "Plaintiff has indicated that he does not even now if a videotape ever existed." The simple solution would be to ask the USMS under oath, and to examine the logs, but Your Honor would rather continue by saying "he cannot plausibly allege that Defendants conspired to destroy a videotape in violation of his constitutional [sic] rights", which should use a capital "C" since I refer to the US Constitution rather than any other constitution. In Court parlance, I would ask to treat the witness as hostile, since they would be denying actions. This is worrisome that Your Honor

[25] I am reminded of the Texas inmate who was sentenced to death, but The Court set it aside since his IQ was 68. Texas then retested the inmate and he scored a 70, thus being eligible for being executed. The moral is: George Bush is the Education President.

would rather let a wrong-doer go free than even ask them if the tape proving their lying to federal Law Enforcement Officers existed. By the way, I would be willing to bet money that the tape existed, since the US DOJ wanted to try Guantanamo prisoners here, and this year held the son-in-law of Osama Bin Laden in the SDNY. Surely anyone carrying a suspicious package would be caught on videotape, and thus videotapes must be made on the premises of SDNY and 2nd Circuit Court of Appeals.

The analogy I use is that if I've operated on myself, then when I have a serious disease, it's okay for me to operate on myself and not use a doctor. It does not hold in the medical nor the judicial sphere.

Estoppel

Sometimes the US Supreme Court takes a minor point, and conflates that into a deciding factor (e.g. Chief Justice Roberts on whether the compulsory Obamacare is a tax or not). I would submit to The Court that under "estoppel"[26], if the Government's Auerbach asks for the tape to complete the administrative review of my complaint, then the USMS and AUSA Harwood are "estopped" from saying that I could not produce the tape. To use the definition: Harwood and the USMS are estopped because of "a series of legal and equitable doctrines that preclude "a person from denying or asserting anything to the contrary of that which has … by his own deed, acts, or representations, either express or implied."" Auerbach asks for the tape, and Auerbach should (honorably) therefore make such a formal request of the SDNY USMS by mail, certified, RRR, as Auerbach did with me. I also ask for whatever other measures Your Honor will entertain to get to the truth of the many incidents itemized above, including assault, cover-up, intimidation of a CI by two different groups, destruction of evidence, false declarations made by Officers of the Court in NY State.

Humbly and sincerely,

By: ___/s/ Peter Lindner_____ Dated: New York, NY the 12th Day of April , 2013

Peter Lindner
Plaintiff, *Pro Se*
1 Irving Place, Apt. G-23-C
New York, New York 10003
Home/ Fax: 212-979-9647
Cell: 917-207-4962
Email: nyc10003@nyc.rr.com

Sworn to before me

This _____Day of March, 2013

_____
Notary Public
NYC, NY

Notarized signature in document without suffix of Apr 12, 2013 and also on last page of this document

[26] It is defined as:

" Estoppel in its broadest sense is a legal term referring to a series of legal and equitable doctrines that preclude "a person from denying or asserting anything to the contrary of that which has, in contemplation of law, been established as the truth, either by the acts of judicial or legislative officers, or by his own deed, acts, or representations, either express or implied."

This term appears to come from the Old French estoupail (or variation), which meant "stopper plug", referring to placing a halt on the imbalance of the situation. The term is related to the verb "estop" which comes from the Old French term estopper, meaning "stop up, impede." "
http://en.wikipedia.org/wiki/Estoppel

cc: via fax, email and/or USPS:
The Honorable USDJ Alison J. Nathan
(via the SDNY Pro Se Office)
SDNY
500 Pearl Street
NYC, NY 10007
NathanNYSDChambers@nysd.uscourts.gov
Courtroom: 23B
Chambers Phone: (212) 805-0278
Deputy Phone: (212) 805-0142

Gerald M. Auerbach, General Counsel
U.S. Marshals Service
2604 Jefferson Davis Highway
Alexandria, VA 22301
Voice: 202-307-9054
Fax: 703-308-0058
Email: gauerbach@usms.doj.gov

Preet Bharara
US Attorney, SDNY
Christopher B. Harwood, Assistant US Attorney (AUSA)
86 Chambers St, 3rd Floor
NY, NY 10007
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Fax: 212-637-2786
Email: Christopher.Harwood@usdoj.gov

Eric A. Johnson, Special Agent in Charge
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1425 New York Avenue, N.W.,
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Washington, D.C. 20530-2001
Voice 202-616-4760
Fax 202-616-9881
oig.hotline@usdoj.gov

Janice Tate
202-307-9287
Asst to USMS General Counsel Auerbach, Esq.
Janice.tate@usdoj.gov

Office of Inspection 202 307-9155
Sharon Duncan, Asst Chief Inspector
Fax: 202-307-9268 O.of I. is in charge of the US Marshal's for civil misconduct complaints; Wednesday, December 28, 2011 2:21 PM
Email: internal.affairs@usdoj.gov

Jennie Woltz, Esq., an Associate
Kurt Peterson, Esq. Partner
Littler Mendelson
900 Third Ave, 7th Floor
NYC 10022
Phone: 212-583-2689
Fax: 212-832-2719
Email: jWoltz@littler.com

Attachments 1-5: in
a separate document since it exceeds 4meg limit

Attachment 6: 11 page letter to USMS in Sep 2010

(too large to fit within 4meg limit of Pacer, and is stored as a separate exhibit)

Attachment 7: Sworn, notarized signature of Plaintiff Pro Se Lindner on Document 95

would rather let a wrong-doer go free than even ask them if the tape proving their lying to federal Law Enforcement Officers existed. By the way, I would be willing to bet money that the tape existed, since the US DOJ wanted to try Guantanamo prisoners here, and this year held the son-in-law of Osama Bin Laden in the SDNY. Surely anyone carrying a suspicious package would be caught on videotape, and thus videotapes must be made on the premises of SDNY and 2nd Circuit Court of Appeals.

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Estoppel

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Humbly and sincerely,

By: _____ Dated: New York, NY the 10th Day of April, 2013

Peter Lindner
Plaintiff, *Pro Se*
1 Irving Place, Apt. G-23-C
New York, New York 10003
Home/ Fax: 212-979-9647
Cell: 917-207-4962
Email: nyc10003@nyc.rr.com

Sworn to before me
This 10 Day of April, 2013

ADAM KHAN
Notary Public, State of New York
No. 01KH6262865
Qualified in New York County
Commission Expires June 4, 2016

_____
Notary Public
NYC, NY

[26] It is defined as:
" Estoppel in its broadest sense is a legal term referring to a series of legal and equitable doctrines that preclude "a person from denying or asserting anything to the contrary of that which has, in contemplation of law, been established as the truth, either by the acts of judicial or legislative officers, or by his own deed, acts, or representations, either express or implied."

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